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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JULY 2 1994

In the Matter of

Further Forbearance from Title II
Regulation for Certain Types of
Commercial Mobile Radio Service
Providers

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GN Docket No. 94-33

To: The Commission

REPLY COMMENTS OF BELL SOUTH

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH CELLULAR CORP.
BELLSOUTH WIRELESS, INC.
MOBILE COMMUNICATIONS CORPORATION OF
AMERICA

William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610

Charles P. Featherstun
David G. Richards
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

July 12, 1994

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REPLY COMMENTS

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Wireless, Inc., and Mobile Communications Corporation of America (collectively "BellSouth") hereby reply to the comments submitted in response to the Commission's *Notice of Proposed Rule Making* (FCC 94-101, released May 4, 1994) ("*NPRM*") in this proceeding. In its comments, BellSouth urged the Commission to apply "an even-handed forbearance scheme to all CMRS providers." ^{1/} While it took no specific position on which Title II sections warranted further forbearance, BellSouth supports an exemption for non-voice services from Section 225 (TRS). ^{2/} Additionally, BellSouth agrees with those parties who indicated that further forbearance from Section 226 (TOCSIA) is warranted for all CMRS. ^{3/}

^{1/}Comments of BellSouth at 7.

^{2/}Comments of BellSouth at 3, note 7.

^{3/}See Comments of Bell Atlantic Mobile Systems, Inc. at 8; Comments of Southwestern Bell Mobile Systems, Inc. at 11; Comments of ALLTEL Mobile Communications, Inc. at 3; Comments of McCaw Cellular Communications, Inc. at 5-6; and Comments of Dial Page, Inc. at 7-8.

As BellSouth stated in its comments, the Commission should exempt non-voice services from Section 225 as these services are fully accessible to the hearing impaired, and it is unfair to impose the costs of supporting TRS voice services on non-voice CMRS providers whose services are inherently accessible to all consumers protected under the law.^{4/}

Further, BellSouth opposes *selective* forbearance from Section 225 for "small" CMRS providers as suggested by various commenters.^{5/} Such selective forbearance would be inconsistent with Congress' objective of similar services being subject to consistent regulatory classification and achieving "regulatory symmetry in the classification of mobile services."^{6/} Further, as demonstrated by GTE Service Corporation and McCaw Cellular Communications, Inc., small entities would pay only \$100 per year under Section 225, thus undermining any need for selective forbearance for "small" CMRS

^{4/} See, e.g., Comments of Applied Technology Group, Inc. at 7-8 and Comments of GTE at 6-7.

^{5/} See Comments of OneComm Corporation at 7; Comments of American Mobile Telecommunications Association, Inc. at 12; Comments of Geotek Communications, Inc. at 7 (maintaining that Commission should forbear from applying Section 225 to CMRS providers with business customer bases); and Comments of E.F. Johnson Company at 10 (requesting exemption for small CMRS licensees from provisions of Section 225 requiring carriers to provide TRS).

^{6/} *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd. 1411, 1418 (1994).

providers.^{7/} Accordingly, the Commission should apply Section 225 to all CMRS providers of *voice services* irrespective of size.

BellSouth also supports forbearance from Section 226 (TOCSIA) for all CMRS. In order to forbear from imposing Section 226 with regard to CMRS providers, the Commission must make the following determinations:

- (i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (ii) enforcement of such provision is not necessary for the protection of consumers; and
- (iii) specifying such provision is consistent with the public interest.^{8/}

BellSouth agrees with Bell Atlantic Mobile Systems, Inc. that enforcement of Section 226 is not necessary to ensure reasonable rates given the Commission's determination that the CMRS marketplace is sufficiently competitive to warrant forbearance from Title II

^{7/} Comments of GTE Service Corporation at 5 (defining a small entity as those with less than \$333,333 in annual interstate revenues) and Comments of McCaw Cellular Communications, Inc. at 3. NYNEX further pointed out that under the TRS Fund plan, "all CMRS providers would fund TRS on a proportional basis, thereby insuring that smaller carriers are not unduly burdened by this obligation." Comments of The NYNEX Corporation at 5.

^{8/} 47 U.S.C. § 332(c)(1)(A).

tariff requirements.^{2/} Requiring CMRS providers to file informational tariffs under Section 226 would be at odds with this determination.^{10/}

Further, enforcement of Section 226 is not necessary for the protection of consumers.^{11/} There is no evidence that CMRS providers engage in practices similar to those engaged in by landline operator services which initially prompted adoption of TOCSIA.^{12/} BellSouth agrees with Dial Page, Inc. that the "captive customer" problem which gave rise to TOCSIA does not exist in CMRS.^{13/} CMRS is comprised of competitive providers who must keep their subscribers satisfied in order to remain in business. If a subscriber becomes displeased with its service, it may switch to another competitor. Thus, CMRS subscribers are not "captive."^{14/}

^{2/} Comments of Bell Atlantic Mobile Systems, Inc. at 8; *see* 47 U.S.C. § 332(c)(1)(A)(i); *see also* Comments of Southwestern Bell Mobile Systems, Inc. at 11; Comments of ALLTEL Mobile Communications, Inc. at 3; and Comments of McCaw Cellular Communications, Inc. at 5-6.

^{10/} *See* Comments of McCaw Cellular Communications, Inc. at 6 ("Under a strict construction of TOCSIA, therefore, each of the thousands of CMRS providers would have to file tariffs because any one of them could unknowingly and involuntarily be converted into an OSP if a user of a mobile public phone service roams onto their system.").

^{11/} *See* 47 U.S.C. § 332(c)(1)(A)(ii); *see also* Comments of Bell Atlantic Mobile Systems, Inc. at 9; Comments of ALLTEL Mobile Communications, Inc. at 3; Comments of McCaw Cellular Communications, Inc. at 4; and Comments of Southwestern Bell Mobile Systems, Inc. at 11-12.

^{12/} Comments of Bell Atlantic Mobile Systems, Inc. at 9; Comments of Dial Page, Inc. at 7; and Comments of ALLTEL Mobile Communications, Inc. at 3.

^{13/} Comments of Dial Page, Inc. at 7.

^{14/} In addition, Sections 201 and 202 provide the necessary mechanisms to stop OSP abuse among CMRS providers if it becomes a problem. *See* Comments of Dial Page, Inc. at 8.

Forbearance from Section 226 would be consistent with the public interest because application of this section could impede future development, innovation, and competition in CMRS.^{15/} It has been estimated that it would cost in excess of \$20 million to bring cellular systems into compliance with TOCSIA.^{16/} The cost of modifying all CMRS in order to comply with TOCSIA would be exorbitant. Accordingly, because "the burden of compliance is likely greater for CMRS providers . . . than for other carriers,"^{17/} forbearance from Section 226 is warranted.

^{15/} See Comments of Southwestern Bell Mobile Systems, Inc. at 15-16; Comments of McCaw Cellular Communications, Inc. at 5; and Comments of Bell Atlantic Mobile Systems, Inc. at 9.

^{16/} GTE Petition for Reconsideration, GN Docket 93-252, at 17; see Comments of McCaw Cellular Communications, Inc. at 5 and Comments of ALLTEL Mobile Communications, Inc. at 3.

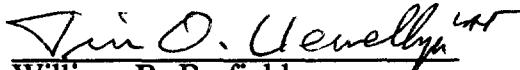
^{17/} Comments of Dial Page, Inc. at 8.

CONCLUSION

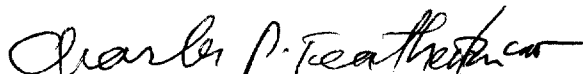
For the foregoing reasons, as well as the reasons stated in BellSouth's Comments filed June 27, 1994, BellSouth respectfully requests that the Commission (1) forbear from applying Section 225 to non-voice services and Section 226 to all CMRS and (2) apply any forbearance even-handedly to all CMRS providers.

Respectfully submitted,

BELLSOUTH CORPORATION
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BELLSOUTH CELLULAR CORP.
BELLSOUTH WIRELESS, INC.
MOBILE COMMUNICATIONS CORPORATION OF AMERICA

By: 
William B. Barfield
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